



- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is timely given or claim is timely made;
- (4) Whether certain defenses apply.

These issues are deemed jurisdictional. Before the Appeals Board can exercise jurisdiction over a preliminary hearing matter, there must be a dispute involving one of those issues enumerated in K.S.A. 44-534a, or there must be a showing that the Administrative Law Judge exceeded his jurisdiction as required by K.S.A. 44-551. The record and Order with which the Appeals Board is presented in the case makes a jurisdictional finding impossible.

The claimant states that the issue before the Appeals Board is whether the claimant suffered an accidental injury arising out of and in the course of the claimant's employment with the respondent. The respondent likewise addresses this issue in its brief. However, the claimant admits at page 7 of his brief that in addition to the issue of whether the incident described by claimant as occurring in respondent's warehouse actually happened, there is the second question of whether that occurrence resulted in an injury requiring medical treatment. In other words, it is possible that the Administrative Law Judge denied medical benefits to claimant because claimant failed to prove either that he was in need of medical treatment, or that medical treatment was needed as a result of the injury alleged. The evidence presented at Preliminary Hearing included a "Medically fit to work" slip releasing claimant to return to work without restrictions on November 29, 1994. Thus, although it appears from the record that indeed the primary issue in this case is whether claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent, it is not inconceivable that the Administrative Law Judge based his decision denying medical treatment benefits upon a finding that claimant was not in need of medical treatment for the alleged injury. The Appeals Board would not have jurisdiction to review such a finding on an appeal from a preliminary order.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that this proceeding should be, and hereby is, remanded to the Administrative Law Judge for additional findings or statement explaining the basis for the Order of December 15, 1994, or such subsequent or amended order as the Administrative Law Judge may enter. The Appeals Board does not retain jurisdiction over this matter and the parties must file a new application for review and follow the appropriate procedures, should they be aggrieved, after they receive the additional findings and order from the Administrative Law Judge.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Michael Preston, Overland Park, Kansas  
H. Wayne Powers, Overland Park, Kansas  
Steven J. Howard, Administrative Law Judge  
George Gomez, Director